

STATE OF MICHIGAN
COURT OF APPEALS

KENDRA SUE RIDENOUR,

Plaintiff-Appellee,

v

GORDON LEONARD RIDENOUR,

Defendant-Appellant.

UNPUBLISHED

October 2, 2003

No. 239057

Cass Circuit Court

LC No. 99-000278-DM

Before: Cooper, P.J. and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

I.

Defendant first contends that the trial court clearly erred in imputing income to him when determining his child support payments. We disagree.

The trial court's decision whether to impute income is reviewed for an abuse of discretion. *Rohloff v Rohloff*, 161 Mich App 766, 776; 411 NW2d 484 (1987). A trial court's factual findings are reviewed for clear error. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake was made. The party appealing the support order bears the burden of showing that a mistake was made. *Beason v Beason*, 435 Mich 791, 803-805; 460 NW2d 207 (1990); *Thames v Thames*, 191 Mich App 299, 301-302; 477 NW2d 496 (1991). A trial court's disposition, however, is subject to de novo review. *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992). We will not reverse the trial court's disposition unless we would have reached a different result. *Id.*

Under MCL 552.519(3)(a)(vi), the child support formula "shall be based upon the needs of the child and the actual resources of each parent." Actual resources include the payer's unexercised ability to pay. *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998). The decision to impute income is based on the evaluation of equitable factors including prior employment experience, education level, physical and mental disabilities, the presence of children of the marriage in the party's home and its impact on the earnings of the parties, availability of employment in the local geographical area, the prevailing wage rates in the local geographical area, special skills and training, or whether there is any evidence that the party in

question is able to earn the imputed income. *Id.* at 199, quoting Michigan Child Support Formula Manual, tenth rev, p 8.

Defendant testified that upon completing an apprentice program operated by the Steam Fitters and Plumbers Union, he earned \$25.15 per hour, plus benefits at Schreiner & Sons. Defendant contends, however, that there was no evidence that this type of work would be available forty hours a week, fifty-two weeks a year. In support of this contention, defendant testified that he quit Schreiner & Sons because he was not getting thirty hours a week. But Bruce Schreiner, defendant's employer, testified that there was regular work available for defendant. Schreiner explained:

Regular -- there was work available. There -- there would be, I would say, an average of 36 to 38 hours if he was there and ready to work at -- with no problem, but most of the time, guys get 40, unless there's just -- you know, job ends early and they -- there's an hour here or there they don't get, so --

Based on this testimony, we find that the trial court did not err in finding that defendant had the ability to earn \$25 per hour.

Nor did the trial court err in finding that defendant either chose not to work full time or concealed his income. There was testimony that defendant's income from his own business, Peach Mechanical, decreased after defendant's girlfriend, Laurie Horein, began receiving a salary from Peach Mechanical in April 1999. Defendant testified that in December 1998, he may have received \$500 per paycheck, but did not get a check every week. Defendant acknowledged that he received three \$400 checks in February 1999 and two \$300 checks in March 1999. There was also testimony that even though Peach Mechanical's 1999 gross receipts increased to \$109,042, defendant decided to close the business. While defendant claimed that he closed the business because of expenses, Karen Kizer, a psychotherapist who investigated the parties' custody dispute, testified that defendant stated: "My ex-wife is making accusations that I was hiding money. They were going to audit, and I could not afford it, so my attorney said to close it up." There was also testimony that, after closing Peach Mechanical, defendant worked for Horein in a business very similar to Peach Mechanical. Horein's business obtained and used Peach Mechanical's old telephone number and used the tools and equipment from Peach Mechanical.

Based on the record, we find the trial court did not clearly err in imputing income of \$25 per hour to defendant and finding that defendant concealed his income. We agree with the trial court's order that defendant pay \$196 per week in child support for two minor children.

II.

Defendant next argues that the trial court erred in awarding the marital home to plaintiff allocating a \$19,000 mortgage debt to defendant. Defendant's argument is premised on his assertion that the parties had no legal interest in the home after defendant's parents foreclosed on the mortgage loan. It is uncontested that the parties owed \$19,000 on a loan from defendant's parents which the parties used to pay off a land contract on the marital home. After the parties stopped making payments of \$200 per month, defendant's parents attempted to foreclose on the mortgage. In a quiet title action, the trial court entered a judgment ruling that the mortgage, the

foreclosure by advertisement, and the sheriff's deed were invalid and void (*Ridenour v Ridenour*, Cass Circuit Court Docket No. 00-895-CH).¹ Because the trial court's ruling in this case agrees with the trial court's ruling in the quiet title action and the ruling in the quiet title action is not before us in this appeal, we find defendant's argument without merit.

III.

Finally, defendant contends that the trial court clearly erred in finding that he caused the marital breakdown. This Court reviews a property distribution by first reviewing the trial court's factual findings for clear error and then deciding whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

While the property division need not be equal, it must be equitable. *Sparks, supra* at 159. To reach an equitable division, the trial court should consider the following factors: the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, earning ability, needs, fault or misconduct, and any other equitable circumstance. *Id.* While the conduct of the parties may be relevant to the distribution of the property, the trial court must consider the relevant factors and not assign disproportionate weight to any one circumstance. *Id.* at 160-163.

Deferring to the trial court in regard to the witnesses' credibility, *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), we conclude that the trial court did not clearly err in finding that defendant's relationship with Horein contributed to the breakdown of the marital relationship. The trial court found strong evidence that defendant had an intimate relationship with Horein before the parties separated. The trial court's findings were supported by testimony from plaintiff, Horein, Celeste Horein, and the parties' neighbor.

We also conclude that the trial court did not assign disproportionate weight to the fault factor. *Sparks, supra* at 158. In addition to this factor, the trial court also relied on the facts that defendant attempted to conceal property, defendant concealed his income, and defendant attempted to prevent the disclosure of his financial status. We conclude that the trial court's property award was fair and equitable in light of the facts presented at trial.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

¹ This judgment was entered on March 19, 2002, almost three months after the judgment of divorce was entered and approximately two months after defendant filed his claim of appeal in this case.